

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 22 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

4:49pm

In re: HERMAN ATKINS.

No. 06-74094

HERMAN ATKINS,

D.C. No. CV-01-01574-PA
Central District of California,
Los Angeles

Petitioner,

v.

ORDER

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA,

Respondent,

DANNY C. MILLER,

Real Party in Interest.

Before: SCHROEDER, Chief Judge, REINHARDT and WARDLAW, Circuit Judges.

This petition for a writ of mandamus raises issues that warrant a response. *See* Fed. R. App. P. 21(b). The Clerk shall file the response submitted August 21, 2006 by real party in interest Danny C. Miller ("Miller"). The Clerk shall file the reply submitted August 22, 2006 by petitioner Herman Atkins ("Atkins"). The Clerk shall file the response submitted August 22, 2006 by the district court.

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06-74094

The petition for writ of mandamus is granted. Evidence of actual innocence is both relevant and not subject to exclusion under Federal Rule of Evidence 403. The order for pre-trial disclosure improperly encompasses trial strategy and other attorney work product. Moreover, much of the "bad act" evidence appears relevant to plaintiff's case.

CERTIFICATE OF SERVICE

I, Emily Gordon, hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 30, 2007.

/s/ Emily Gordon
Emily Gordon